

place till nine years after the promise, and the majority of the judges, Lord Holt indeed dissenting, held that where the agreement is to be performed upon a contingency, and it does not appear upon the face of the agreement that it is to be performed after the year, there a note in writing is not necessary, for the contingency might happen within the year, but where it appears from the whole tenor of the agreement that it is to be performed after the year, there a note in writing is required. And in *Fenton v. Emblers*, 3 Burr. 1278; S. C. 1 W. Black. 353, it was *decided **535** that an agreement to leave money by will need not be in writing, though uncertain as to the time of its performance. "A contingency," said Mr. Justice Dennison, "is not within the Statute, nor any case that depends on a contingency," and see also *Wells v. Horton*, 4 Bing. 40. Other cases are mentioned in *Ellicott v. Peterson*, that would not be within the Statute, as a contract to serve for an indefinite time, the services under it to be compensated by payment by the week or month, or a like contract to be determined at any time on reasonable notice. In *Wilhelm v. Hardman*, 13 Md. 140, an *infant* agreed with another, by parol, to work on the latter's farm for seven years, in consideration that the latter would provide him necessary food, clothing and lodging, and give him schooling, whenever there should be a school convenient, during the time he should work for the defendant, and a horse, saddle and bridle *in addition* if he remained seven years, and the agreement was held without the Statute, on the authority of *Ellicott v. Peterson*. It may be observed that in *Bracegirdle v. Heald*, 1 B. & A. 722, where a contract for a year's service by the plaintiff, to commence at a subsequent day, was held invalid without writing, it was objected, but without effect, that the continuance of the service by the plaintiff depended upon the continuance of his life, and that the contract should be treated as if the term, "if he should so long live," were inserted in it, when the case would be within *Fenton v. Emblers*.

In *Bracegirdle v. Heald*, Lord Ellenborough said that a case, which extended one minute beyond the time pointed out by the Statute, fell within its prohibition. But in *Cawthorn v. Cawdrey*, 13 C. B. N. S. 406, the plaintiff agreed on a Sunday to service for a year, the service to commence on the Monday, upon which day, with the defendant's knowledge, he commenced the service and received a sum of money on account. In an action for a wrongful dismissal it was held, that the jury might infer a new implied contract on the Monday for a year's service from that day, and Willes J., at the trial of the cause, thought a contract on one day to serve a year from the following day was not within the Statute at all. A contract for a partnership during a term of years must be in writing, *Williams v. Jones*, 5 B. & C. 108; but an agreement by a contractor to share in the profits of an undertaking to make a canal may be proved by parol, though the canal cannot be made in a year, for the agreement was performed instantly, and the moment the parties entered into it they had all the mutual rights which belonged to them as joint partners in the concern, *McKay v. Rutherford*, 6 Moore P. C. 413. A contract to employ a clerk for five years and pay him a yearly salary must also be in writing, *Giraud v. Richmond*, 2 C. B. 835, and